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EXAMINER

PHAM, CHRYSTINE

ART UNIT	PAPER NUMBER
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2192

DATE MAILED: 01/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/943,563

Applicant(s)

BARTUREN ET AL.

Examiner

Chrystine Pham

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. This action is responsive to Appeal Brief on March 24<sup>th</sup> 2005. Claims 1-17 are presented for examination.

### *Response to Arguments*

2. Appellants' arguments with respect to claims 1, 8, and 12 have been considered and are persuasive. Therefore, the finality of the Office Action dated June 16<sup>th</sup> 2005 has been withdrawn. However, upon further consideration, new grounds of rejection are made in view of newly discovered prior art.
3. Other arguments have been fully considered but they are not persuasive.

Appellants conclude, "the Examiner argues that '*each software product package is associated with an operating system on which it is to run (i.e., assigned a role)*'.

Assuming, for purposes of argument, that this statement is correct, it still does not establish that Apfel discloses or suggests that the 'at least one role' is 'assigned to the at least one software product package by the second sub-system' as recited in claim 3 ... no such teaching is provide by Apfel, because it is **axiomatic that the Package Server of Apfel does not assign environments or operating systems to the target computers**" (Emphasis added)(Brief, page 11, 1<sup>st</sup> full paragraph).

It is respectfully submitted that, Appellants' concluding sentence, i.e., "no such teaching is provided in Apfel, because it is **axiomatic that the Package Server of Apfel does not assign environments or operating systems to the target computers**" does not follow from the sentences that precede it because, it is respectfully submitted that assigning (i.e., associating) different environments (i.e., operating systems) to different upgrade packages is entirely unrelated to assigning environments to target computers. Indeed, "**the Package Server of Apfel does not assign environments or operating systems to the target computers**" because there is no need to assign operating systems to target computers in a system that distributes upgrade packages to different target computers (with respective operating systems) to facilitate the upgrading of software components running on the respective operating systems. As has been established in the final Office Action (page 3), Apfel is directed to distributing upgrade packages for upgrading software components running on different operating systems, it is essential in Apfel that each upgrade package is associated (i.e., assigned) with an operating system (i.e., environment), in which **it is to run** (i.e., a role) so that a **version 1** of software component running in **operating system A** (i.e., **version 1 system A**), does not get upgraded with an upgraded **version 2** of the same software component that is supposed to run in **operating system B** (i.e., **version 2 system B**) simply because **version 2 system B** is designed to run in operating system type **B**, and thus cannot run in operating system **A**. Thus, contrary to Appellants' argument, Apfel's associating (i.e., assigning) different operating systems (i.e., roles) (to which different computers belong) with different

upgrade packages clearly anticipates “assigning at least one role to at least one software product packages”.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

*A person shall be entitled to a patent unless –*

*(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.*

5. Claims 1, 2, 4-8, 10, 12-15, and 17 are rejected under 35 U.S.C. 102(e) as being anticipated by Goiffon et al. (US 6,427,230 B1; hereinafter *Goiffon*).

**Claim 1**

*Goiffon* teach an integrated data processing system (see at least *object management system 100* Fig.1 & associated text) for managing a process (i.e., method) of delivery of software products (see at least *object repository, software constructs, packages* Abstract; *export function, element, remote system* col.7:23-40; *Export elements, Client Server 216* col.14:20-25; 240 Fig.2B & associated text; 227 Fig.2A & associated text) to target software product execution units in a network environment (see at least *client server 216* Fig.2A & associated text), comprising:

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- a central repository for storing software components at least one software product (see at least *object repository, software constructs, packages* Abstract; *AIM Server 214, Element Repository 220* Fig.2B & associated text; col.12:7-15; col.12:23-67; *Host A 228, Memory 229* Fig.2B & associated text; *Host A 228, Memory 229, data modules* col.12:57-col.13:20);
- a first sub-system for identifying within the central repository software components (see at least *selecting, data modules* col.2:53-56; *users selectively include, data modules* col.3:1-45) of software product (see at least *integrated package* col.2:53-56; *creation, data packages, data modules* col.3:20-45) be delivered (see at least *1808, 1816* Fig.18A & associated text; col.23:1-10);
- a second sub-system for creating at least one software product package (see at least *package creation, package definition* col.4:14-67) from the identified software components identified by the first sub-system (see at least *software constructs, user interface* col.4:14-67; *Element Packager 118* Fig.1 & associated text), and
- a third sub-system for distributing the least one software product package created by the second sub-system to the target software product execution units and installing the software product package thereon (see at least *export function, element, remote system* col.7:23-40; *Export elements, Client Server 216* col.14:20-25; *240* Fig.2B & associated text; *227* Fig.2A & associated text).

**Claim 2**

The rejection of base claim 1 is incorporated. *Goiffon* further teach a software package distribution repository for storing the at least one software product package created by the second sub-system from the identified software components (see at least 1024 Fig.10 & associated text; 1808, 1816 Fig.18A & associated text; 1828 Fig.18B & associated text; *Create Elements, Update element* col.14:54-63).

#### **Claim 4**

The rejection of base claim 1 is incorporated. *Goiffon* further teaches first sub-system manages storage in the central repository of the software components software product to be delivered (see at least *object repository, software constructs, packages* Abstract).

#### **Claim 5**

The rejection of base claim 1 is incorporated. *Goiffon* further teach a fourth sub-system for performing a building process of software code components among the identified software components of the software product be delivered (see at least *interdependencies, group modules, packages* col.2:22-47; *package creation, software constructs, interdependencies* col.4:14-67; *data components, Element Packager 118, build, identified elements* col.8:47-67), the fourth sub-system storing result of building process in the central repository (see at least *object repository, software constructs, packages* Abstract).

#### **Claim 6**

The rejection of base claim 1 is incorporated. *Goiffon* further teach a fifth sub-system managing a process applying changes (i.e., new version) to at least one software product distributed by the third sub-system (see at least *package objects, forming relationships, interdependencies* col.5:30-40; *package, renovation operation* col.4:15-25; *data modules, functional unit, renovation operations* col.3:39-45; *renovation, tools, new versions* col.8:1-17).

#### **Claim 7**

The rejection of base claim 1 is incorporated. *Goiffon* further teach a sixth sub-system for recording information provided by at least one of the first through fifth sub-systems the integrated data processing system during delivery of the software product (see at least 227 Fig.2A & associated text; 240 Fig.2B & associated text).

#### **Claim 8**

Claim recites a method for delivering software products to target software product execution units in a network environment as have been addressed in claim 1, therefore, is rejected for the same reasons as cited in claim 1.

#### **Claim 10**

The rejection of base claim 8 is incorporated. Claim recites limitations, which have been addressed in claim 2, therefore, is rejected for the same reasons as cited in claim 2.

#### **Claim 12**



*Goiffon* teach a method of developing and installing a software product on a plurality of target computers (see at least *object repository, software constructs, packages* Abstract; *export function, element, remote system* col.7:23-40; *Export elements, Client Server 216* col.14:20-25; 240 Fig.2B & associated text; 227 Fig.2A & associated text), the method comprising:

- storing a plurality of components in a central repository (see “central repository” claim 1);
- using at least some of the plurality of stored components to build the software product (see “second sub-system” claim 1);
- storing the built software product in the central repository (see “software product package distribution repository” claim 2)
- creating an installable software package that includes at least some of the plurality of components and the built software product (see “third sub-system” claim 1);
- storing the installable software package in a second repository;
- distributing the installable software package to at least some of the plurality of target computers (see “target software product execution units”, “third sub-system” claim 1);
- installing the distributed installable software package on the at least some of the plurality of target computers (see “target software product execution units”, “third sub-system” claim 1);

### **Claim 13**

The rejection of base claim 12 is incorporated. *Goiffon* further teach wherein software product comprises a newly developed software product (see at least *package objects, forming*

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*relationships, interdependencies col.5:30-40; package, renovation operation col.4:15-25; data modules, functional unit, renovation operations col.3:39-45; renovation, tools, new versions col.8:1-17).*

#### **Claim 14**

The rejection of base claim 12 is incorporated. Claim recites limitations, which have been addressed in claim 6, therefore, is rejected for the same reasons as cited in claim 6.

#### **Claim 15**

The rejection of base claim 12 is incorporated. *Goiffon* further teach recording information regarding the software product in a tracking sub-system (see at least *object repository, software constructs, packages* Abstract).

#### **Claim 17**

The rejection of base claim 12 is incorporated. *Goiffon* further teach providing a configuration management subsystem that controls and manages different versions of the software components stored in the central repository (see at least *groups of re-usable code, data modules, other groups col.3:15-20; updated versions, associated elements, interrelated, Element Inventory col.8:10-17).*

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

*(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.*

7. Claims 3 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Goiffon* in view of *Apfel et al.* of record (US 5974454, hereinafter *Apfel*).

### **Claim 3**

The rejection of base claim 1 is incorporated. *Goiffon* further discloses the third sub-system distributes the at least one software product package to target software product execution units belonging to at least one environment (see at least *different operating environment* col.8:58-67). *Goiffon* does not expressly disclose said environment according (i.e., matching) to at least one role assigned to the at least one software product package. However, *Apfel* teaches assigning (i.e., associating) each software product package with a role (i.e., environment or operating system) and distributing said package to target software product execution units belonging to an environment according (i.e., matching) said role (e.g., see *configuration of computer 20, different upgrade package* col.6:65-67; *type of operating system, upgrade package URL, query* col.8:52-9:5; col.9:35-42). *Goiffon* and *Apfel* are analogous art because they are directed to distributing software packages. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the teaching of *Apfel* into that of *Goiffon* for the inclusion of assigning (i.e., associating) a role (i.e., operating system) for each software package

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and distributing said package to target execution units belonging to an environment according (i.e., matching) said role. And the motivation for doing so would have been to provide software packages to a variety of execution units belonging to different operating systems (see at least *Apfel* col.9:30-45).

### **Claim 9**

The rejection of base claim 8 is incorporated. Claim recites limitations, which have been addressed in claim 3, therefore, is rejected for the same reasons as cited in claim 3.

8. Claims 11 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Goiffon* in view of Albright et al. of record (US 6110228, hereinafter *Albright*).

### **Claim 11**

The rejection of base claim 10 is incorporated. *Goiffon* does not expressly disclose building source code components and storing the result of building in the central repository. However, *Albright* discloses a system and method of distributing executable code to client computers, wherein the source code components are built and the result is store in the central repository (see at least *service site, executable code, source code* Abstract). *Goiffon* and *Albright* are analogous art because they are both directed to distributing and installing software in target computers. It would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to incorporate the teaching of *Albright* into that of *Goiffon* for the inclusion of generating/building execution code from source code components stored in central repository.

And the motivation for doing so would have been to eliminate the necessity of including within the software upgrade (to be distributed and installed in target computers) many lines of [source] code that are dedicated only to permitting the target computers to add software upgrade, thus improving the efficiency of the upgrading process (see *Albright* col.3:1-30).

### **Claim 16**

The rejection of base claim 12 is incorporated. *Goiffon* does not expressly disclose wherein the built software product comprises execution code that is generated from a source code component stored in the central repository. However, *Albright* discloses a method of installing updated executable code (i.e., built software product) in target computers wherein the executable code is generated from a source code component stored in the central repository (see *central software service site, customer, remote location, updated executable code, installing fixes, source code, program product* in Abstract). *Goiffon* and *Albright* are analogous art because they are both directed to distributing and installing software in target computers. It would have been obvious to one of ordinary skill in the pertinent art at the time the invention was made to incorporate the teaching of *Albright* into that of *Goiffon* for the inclusion of generating execution code from source code stored in central repository. And the motivation for doing so would have been the same as has been cited for claim 11.


### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chrystine Pham whose telephone number is 571.212.3702. The examiner can normally be reached on Mon-Fri, 8:30am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tuan Q Dam can be reached on 571.272.3695. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CP  
January 21, 2006



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